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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

5222-034-US01

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on \_\_\_\_\_

Signature \_\_\_\_\_

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Application Number

10/759,080

Filed

January 20, 2004

First Named Inventor

W. GOBUSH

Art Unit

3714

Examiner

J. Pinheiro

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
 (Form PTO/SB/96)

☒ attorney or agent of record.  
 Registration number 58,572
☐ attorney or agent acting under 37 CFR 1.34.  
 Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

  
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Telephone number

September 10, 2009

Date

 NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
 Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: W. GOBUSH

Attorney Docket No: 5222-034-US01

Application No.: 10/759,080

Group Art Unit: 3714

Filed: January 20, 2004

Examiner: J. Pinheiro

For: ONE CAMERA CLUB MONITOR

**APPLICANT'S REMARKS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Mail Stop AF**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

In response to the Final Office Action mailed March 10, 2009, Applicant respectfully requests review of the rejection of claims 1, 4-13, 18-27, 35, and 43-45 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0173367 to Gobush ("Gobush '367") in view of U.S. Patent Publication No. 2004/0032970 to Kiraly ("Kiraly") and, in further view of U.S. Patent No. 5,575,719 to Gobush ("Gobush '719"). In addition, claims 2 and 3 were rejected under § 103(a) as being obvious over Gobush '367, Kiraly, Gobush '719, and in further view of U.S. Patent No. 5,471,383 to Gobush (Gobush '383).

The Examiner also rejected claims 28-32 and 37 under § 103(a) as being obvious over Gobush '367 in view of Kiraly. Claim 33 was also rejected under § 103 as being obvious over Gobush '367, Kiraly, and further in view of Gobush '383. Finally, claims 34 and 36 were rejected under § 103 as being obvious over Gobush '367, Kiraly, and further in view of U.S. Patent Publication No. 2002/0155896 to Gobush (Gobush '896). As discussed in greater detail below, no combination of these references renders the pending claims obvious.

*The Rejections of Claims 1, 4-13, 18-27, 35, and 43-45*  
*Based On Gobush '367, Kiraly, and Gobush '719*

With regard to independent claim 1 of the present invention, the primary reference cited by the Examiner, Gobush '367, discloses a monitor system that measures flight characteristics of an object using fluorescent markers. Applicant's Response to Office Action filed October 29, 2008 at Pages 11-12 and Applicant's Response to Office Action filed October 9, 2007 at Pages 10-12. The primary purpose of using fluorescent markers, as disclosed by Gobush '367, is so that the flight performance of a golf ball is not affected by the markers. *Id.*

The Examiner admits that Gobush, however, is deficient with respect to at least two features of the present invention: (i) a rotatable calibration fixture where the three dimensional positions of the contrasting areas are known relative to one another; and (ii) determining a location of impact of the golf ball on the club face with an accuracy of 0.10 inch. In an attempt to cure these deficiencies, the Examiner cited Kiraly and Gobush. These additional references, however, also fail to disclose the features of the present invention for the following reasons.

Kiraly generally discloses a single camera measurement system. *Id.* However, the calibration system of Kiraly uses a two-dimensional target (158) that includes marks (160) thereon. *Id.* In other words, the target (158) of Kiraly lacks the three dimensional characteristics of the fixture claimed in the present invention. In support of the rejection based on Kiraly, the Examiner also cites Para. 0007, which provides a general description of a prior art calibration method. Applicant notes, however, that Kiraly explicitly teaches away from using such a calibration system. *Id.*

The Examiner also cited Gobush '719 for its purported disclosure of determining a location of impact of the golf ball on the club face with an accuracy of 0.10 inch. This contention, however, has no support. In particular, Gobush '719 discloses a monitoring system that includes at least two camera units that acquire images of a field of view from different angles. *Id.* Again, Gobush '719 discloses the use of two cameras, which is important to note because Gobush '719 has been relied upon by the Examiner for its purported accuracy in determining hit location. *Id.*

In other words, the accuracy of the monitor disclosed by Gobush '719 is derived from its use of two cameras. Indeed, Gobush '719 explicitly states that the location of dots in a field of view are determined based on the known geometric relationships between the cameras. *Id.* Moreover, the accuracy of the present invention is achieved using a single camera, and thus it is impossible to use

the teachings of Gobush '719 to achieve the accuracy of the present invention. To repeat, Gobush '719 teaches away from combination with Gobush '367, which uses only a single camera. Moreover, a skilled artisan would not have been motivated to combine Gobush '719 and Gobush '367 because their teachings are incompatible.

In sum, the disclosures of Gobush '367, Kiraly, and Gobush '719 teach away from combination with one another. Specifically, Kiraly teaches away from combination with Gobush '367 because it seeks to monitor object movement without the use of calibration fixtures. Gobush '719, similarly, teaches away from combination with Gobush '367 and Kiraly because it specifically requires at least two cameras. Because claim 1 of the present invention recites a single camera unit, a skilled artisan would not have been motivated to combine Gobush '367, Kiraly, and Gobush '719 to arrive at the present invention.

Accordingly, Applicants submit that the Examiner's § 103 rejections of claim 1 and claims dependent thereon are have been overcome.

*The Rejection of Claims 28-37 and 41-43 Based On Gobush '367, Kiraly, and Gobush '719*

The Examiner's rejections of independent claims 28 and 37 have no basis. The Examiner repeatedly cites to paragraphs 0007 and 0057 of Kiraly as support for the rejection, although neither of these paragraphs, or any other portion, discloses these features. Specifically, Gobush '367, Kiraly, and Gobush '719 fail to teach, suggest, disclose, or otherwise imply that it is obvious to place a striking instrument in the calibration fixture at a first orientation followed by capturing a first calibration image of the striking instrument and the calibration fixture, as recited by claims 28 and 37 of the present application. Applicant's Response to Office Action filed October 29, 2008 at Pages 12-13 and Applicant's Response to Office Action filed October 9, 2007 at Pages 10-12.

Briefly summarized, the Examiner concedes that Gobush '367 fails to disclose steps (b), (c), (d), (e), (f), and (g). Office Action mailed March 10, 2009 at Pages 11-12. In an attempt to remedy this omission, the Examiner cites Kiraly for its purported disclosure of these steps. *Id.* at Pages 12-13. As support for this contention, paragraphs 0007 and 0057 are repeatedly cited. *Id.* Accordingly, a brief discussion of these portions of Kiraly is appropriate. As discussed in detail below, neither the cited portions of Kiraly nor any other part disclose the features of the present invention recited by the claims. *Id.*

Paragraph 0007 of Kiraly discusses a prior art method of calibrating a camera. Applicant's Response to Office Action filed October 29, 2008 at Pages 11-12 and Applicant's Response to Office Action filed October 9, 2007 at Pages 10-12. In particular, Kiraly states that one prior art method of calibrating includes using a target with precise reference markers, each of which have a known geometry. *Id.* The target is imaged at two known positions to provide a set of calibration points in three dimensions. *Id.* In other words, Kiraly uses a two dimensional target as opposed to a three dimensional target. Paragraph 0057, also cited by the Examiner, describes a calibration and alignment system and process that is actually used by Kiraly. Specifically, the calibration system involves taking two images of a two dimensional target that has marks (160) thereon.

A skilled artisan looking at the cited sections of Kiraly, or any other part of its disclosure, will readily understand that Kiraly is describing two different methods of calibrating a camera that involve taking pictures of marks positioned on a target. Kiraly is completely silent regarding placing a striking instrument in the calibration fixture at a first orientation, and capturing a first calibration image of the striking instrument and the calibration fixture, as recited by independent claims 28 and 37 of the present invention.

Additionally, claims 28 and 37 also recite that a second image of the striking instrument and the calibration fixture is captured from a second perspective view. *Id.* This feature is also not disclosed or suggested by Kiraly. *Id.* Even if, *arguendo*, the pivot point of the calibration fixture was obvious, there is nothing in Gobush '367, Kiraly, or Gobush '719 that suggests that cameras could be calibrated by capturing pictures of a striking instrument and a calibration fixture from two different perspective views. *Id.*

In sum, Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness under § 103 for at least the reasons set forth above. Accordingly, reconsideration and withdrawal of the § 103 rejections is respectfully requested.

#### *The Rejection of the Dependent Claims*

As set forth above, Gobush '367, Kiraly, and Gobush '719, either alone or in combination, fail to teach or suggest the features of the present invention recited by the pending claims. Gobush '383 and Gobush '896 similarly fail to cure the deficiencies of Gobush '367, Kiraly, or Gobush '719. In other words, Gobush '896 and Gobush '383 fail to teach at least the following features of the present invention recited by the claims: (i) determining a location of impact of the golf ball on


the club face with an accuracy of 0.10 inch; and (ii) taking images of a golf club and calibration fixture from two different perspectives.

In light of the clear factual errors set forth in the rejection of the claims, Applicant submits that the Examiner's rejections based on § 103 are improper, and should be withdrawn. As such, reconsideration and allowance of the pending claims is respectfully requested.

Respectfully submitted,  
HANIFY & KING  
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Dated: September 10, 2009

By: \_\_\_\_\_

  
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